

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                               |   |                         |
|-------------------------------|---|-------------------------|
| <b>BARRY KIRKLAND,</b>        | : |                         |
| <b>Petitioner</b>             | : |                         |
|                               | : | <b>No. 1:14-cv-0318</b> |
|                               | : |                         |
| <b>v.</b>                     | : |                         |
|                               | : | <b>(Judge Kane)</b>     |
| <b>JOHN KERESTES, et al.,</b> | : |                         |
| <b>Respondents</b>            | : |                         |

**ORDER**

**THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

On February 18, 2014, Petitioner Barry Kirkland filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the validity of his conviction. (Doc. No. 1.) At the time of filing, Petitioner was serving two life sentences at State Correctional Institution - Mahanoy in Frackville, Pennsylvania following convictions for homicide and rape in the Court of Common Pleas of Dauphin County, Pennsylvania. (Id.) Specifically, on August 10, 2000, a jury convicted Petitioner of first-degree murder, and Petitioner subsequently pleaded guilty on October 13, 2000 to separate charges of rape and murder. (Id.)

On October 7, 2015, Magistrate Judge Saporito issued a Report and Recommendation, recommending that this Court dismiss the petition as untimely under the Antiterrorism and Effective Death Penalty Act (“AEDPA”). (Doc. No. 14.) As Magistrate Judge Saporito discussed, Petitioner never directly appealed his convictions and did not pursue collateral relief in Pennsylvania courts until July 2013, approximately twelve years after the AEDPA limitations period expired. (Doc. No. 14 at 4-5.) Magistrate Judge Saporito also found that Petitioner failed to demonstrate that he is entitled to equitable tolling. (Id. at 6.)

On October 23, 2015, Petitioner filed objections to the Report and Recommendation. (Doc. No. 15.) The Court finds that Magistrate Judge Saporito correctly and comprehensively

addressed the substance of Petitioner's objections in the Report and Recommendation. (Doc. Nos. 14); Ohler v. Lamas, 542 F. App'x 205, 207 (3d Cir. 2013). Accordingly, the Court will not write separately to address Petitioner's objections.

**AND SO**, upon independent review of the record and applicable law, on this 25th day of April 2016, **IT IS HEREBY ORDERED THAT:**

1. Magistrate Judge Saporito's Report and Recommendation (Doc. No. 14), is **ADOPTED**;
2. Petitioner Barry Kirkland's objections (Doc. No. 15), are **OVERRULED**;
3. Petitioner Barry Kirkland's motion for summary judgment (Doc. No. 17), is **DENIED**;
4. Petitioner Barry Kirkland's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. No. 1), is **DISMISSED WITH PREJUDICE** as untimely;
5. A certificate of appealability is **DENIED** as Petitioner has not "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c); and
6. The Clerk of Court is directed to close the above-captioned case.

s/ Yvette Kane  
Yvette Kane, District Judge  
United States District Court  
Middle District of Pennsylvania